

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.102 Reserved ~~Officials not to benefit.~~

3.102-1 ~~General.~~

~~— 41 U.S.C. 22 requires that most Government contracts explicitly state that no member of Congress shall be admitted to any share or part of the contract or any benefit arising from it. If a contract is made between the U.S. Government and any member of or delegate to Congress, or resident commissioner, it may constitute a violation of 18 U.S.C. 431 and 432, resulting in—~~

~~—(a) Both the officer or employee of the Government who awarded the contract and the member, delegate, or resident commissioner being subject to criminal penalties;~~

~~—(b) The contract being void; and~~

~~—(c) The contractor having to return any consideration paid by the Government under the contract. [FAC 90-30]~~

3.102-2 ~~Contract clause.~~

~~— The contracting officer shall insert the clause at 52.203-1, Officials Not to Benefit, in solicitations and contracts exceeding the simplified acquisition threshold, except those related to agriculture that are exempted by 41 U.S.C. 22. [FAC 90-30]~~

52.203-1 Reserved. ~~Officials Not to Benefit.~~

~~— As prescribed in 3.102-2, insert the following clause in solicitations and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22:~~

~~OFFICIALS NOT TO BENEFIT (APR 1984)~~

~~— No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit. [FAC 90-30]~~

3.104-9 Certification requirements.

FAR as of FAC 90-25

(a) *Applicability.* Subsection 27(e) of the Act requires certifications, prior to the award of a Federal agency contract or contract modification for property or services in excess of \$100,000 awarded or executed on or after December 1, 1990, by the officer or employee of the contractor responsible for the offer or bid for that particular contract or contract modification for property or services, and by the contracting officer for that procurement.

FAR as revised

(a) *Applicability.* Subsection 27(e) of the Act requires certifications, prior to the award of a Federal agency contract or contract modification for property or services in excess of \$100,000 awarded or executed on or after December 1, 1990, by the officer or employee of the contractor responsible for the offer or bid for that particular contract or contract modification for property or services, and by the contracting officer for that procurement.

(b) *Competing contractor certification.*

(1) Except as provided in 3.104-9(f), contracting officers shall require the competing contractor to—

(i) Certify in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Disclose to such contracting officer any and all such information, and certify in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certify in writing to such contracting officer that, to the best of his or her knowledge and belief, each officer, employee, agent, representative, and consultant of such competing contractor who, on or after December 1, 1990, has participated personally and substantially in the preparation or submission of such bid or offer, or in a modification of a contract, as the case may be, has certified in writing to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification of a contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), occurring on or after December 1, 1990, as implemented in the FAR.

(b) *Competing contractor certification.*

(1) Except as provided in 3.104-9(f), contracting officers shall require the competing contractor to—

(i) Certify in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Disclose to such contracting officer any and all such information, and certify in writing to such contracting officer that any and all such information has been disclosed; and

(iii) **Except in the case of a contract for the procurement of commercial items,** certify in writing to such contracting officer that, to the best of his or her knowledge and belief, each officer, employee, agent, representative, and consultant of such competing contractor who, on or after December 1, 1990, has participated personally and substantially in the preparation or submission of such bid or offer, or in a modification of a contract, as the case may be, has certified in writing to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification of a contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), occurring on or after December 1, 1990, as implemented in the FAR.

[FAC 90-30]

52.203-8 Requirement for Certificate of Procurement Integrity.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(b) <i>Certifications.</i> As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:</p> <p style="text-align: center;">CERTIFICATE OF PROCUREMENT INTEGRITY</p> <p style="text-align: center;">* * * * *</p> <p>(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [<i>Name of Offeror</i>] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.</p>	<p>(b) <i>Certifications.</i> As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification. The certification in paragraph (2) of this provision is not required for a procurement of commercial items. [FAC 90-30]</p> <p style="text-align: center;">CERTIFICATE OF PROCUREMENT INTEGRITY</p> <p style="text-align: center;">* * * * *</p> <p>(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [<i>Name of Offeror</i>] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.</p>

3.404 Solicitation provision and contract clause.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p style="text-align: center;">* * * * *</p> <p>(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—</p> <p style="text-align: center;">* * * * *</p> <p>(4) * * * * *; or</p> <p style="text-align: center;">—(5) * * * * *.</p> <p>(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts.</p>	<p style="text-align: center;">* * * * *</p> <p>(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—</p> <p style="text-align: center;">* * * * *</p> <p>(4) * * * * *;</p> <p>(5) The solicitation is for a commercial item (see Parts 2 and 12); or [FAC 90-32]</p> <p>(6) * * * * *. [FAC 90-32]</p> <p>(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13 other than those for commercial items (see Parts 2 and 12). [FAC 90-32]</p>

3.502-2 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act— * * * * *</p> <p>(i) Requires each contracting agency to include in each prime contract a requirement that the prime contractor shall— * * * * *</p>	<p>The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act— * * * * *</p> <p>(i) Requires each contracting agency to include in each prime contract, except contracts for commercial items (see Part 12), a requirement that the prime contractor shall— [FAC 90-32] * * * * *</p>

3.502-3 Contract clause.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in all solicitations and contracts.</p>	<p>The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13 other than those for commercial items (see Part 12). [FAC 90-32]</p>

52.203-7 Anti-Kickback Procedures.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>As prescribed in 3.502-3, insert the following clause: ANTI-KICKBACK PROCEDURES (OCT 1988) * * * * *</p> <p>(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships. * * * * *</p> <p>(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph</p>	<p>As prescribed in 3.502-3, insert the following clause: ANTI-KICKBACK PROCEDURES (JUN 1995) * * * * *</p> <p>(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships. * * * * *</p> <p>(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph</p>

(c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract.
(End of clause)

(c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract **which exceed \$100,000.**
(End of clause)
[FAC 90-29]

3.503-2 Contract clause.

FAR as of FAC 90-25

The clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, ~~shall be inserted in solicitations and contracts for supplies or services.~~

FAR as revised

The contracting officer shall insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts **exceeding the simplified acquisition threshold in Part 13. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.** [FAC 90-32]

Subpart 3.9—Whistleblower Protections for Contractor Employees

- 3.900 Scope of subpart.
- 3.901 Definitions.
- 3.902 Applicability.
- 3.903 Policy.
- 3.904 Procedures for filing complaints.
- 3.905 Procedures for investigating complaints.
- 3.906 Remedies.

3.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, et seq., as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

3.901 Definitions.

Authorized official of an agency means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

3.902 Applicability.

This subpart applies to all Government contracts.

3.903 Policy.

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

3.904 Procedures for filing complaints.

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

- (1) The name of the contractor;
- (2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
- (3) The substantial violation of law giving rise to the disclosure;
- (4) The nature of the disclosure giving rise to the discriminatory act; and
- (5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

- (1) The complainant and any person acting on the complainant's behalf;
- (2) The contractor alleged to have committed the violation; and
- (3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

- (1) Order the contractor to take affirmative action to abate the reprisal.
- (2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- (3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed

more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code. [Subpart added by FAC 90-30]

52.203-4 Contingent Fee Representation and Agreement.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs 3.404(b)(1) through (b)(5). If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offer" and "Offeror."	As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs 3.404(b)(1) through (b)(6). If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offer" and "Offeror." [FAC 90-32]
* * * * *	* * * * *

52.203-6 Restrictions on Subcontractor Sales to the Government.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * *	* * * * *
(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.	(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000. [FAC 90-29]
(End of clause)	<i>Alternate I (OCT 1995). As prescribed in 3.503-2, substitute the following paragraph in place of paragraph (b) of the basic clause:</i> (b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s). [FAC 90-32] (End of clause)